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COMMITTEE ON THE RIGHTS OF THE CHILD

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 44 OF THE CONVENTION

Initial reports of States parties due in 2000

NETHERLANDS ANTILLES

[22 January 2001]

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Introduction

1. With a view to implementing article 44, paragraph 1 (a), of the Convention on the Rights of the Child, which entered into force on 16 January 1998 for the Kingdom of the Netherlands in respect of the Netherlands Antilles, the Kingdom's initial report has been drawn up as far as possible in accordance with the general guidelines governing the form and content of initial reports approved by the Committee in October 1991 (CRC/C/5). This report describes the measures taken by the government of the Netherlands Antilles to implement the Convention rights adopted by the Kingdom, plus the progress made in enforcing these rights since the Convention took effect. Difficulties affecting implementation are also discussed.

2. More general information about the Netherlands Antilles can be found in the core document (HRI/CORE/1/Add.67).

I. GENERAL MEASURES OF IMPLEMENTATION

A. Measures taken to harmonize Netherlands Antillean law and policy with the provisions of the Convention (art. 4)

3. Following the entry into force of the Convention in the Netherlands Antilles, there has been a trend in both legislation and policy towards compliance with the requirements of the Convention. An important example is the submission to parliament of a new Civil Code which includes new rules on parental responsibility and access to minor children. The Civil Code contains a description of the duty and the right of parents to look after and raise their children. Parents who are married are automatically entitled to parental responsibility; those who have never been married to each other may acquire parental responsibility by registration in the Guardianship of Minors Register (Gezagsregister). After divorce, the parents may continue to have joint parental responsibility if they make a joint application to the court to this effect.

4. The new Civil Code dispenses with the terms legitimate, illegitimate and natural. These will in future no longer appear in the Civil Code. The criterion that has replaced them is whether or not a child has a family law relationship with a parent.

5. Another new element in the revised Civil Code are the provisions governing the protection of young people against unsuitable programmes. These new measures are covered in more detail in the account of the relevant articles below.

6. This report will regularly refer to the present Civil Code of the Netherlands Antilles (hereafter: BWNA). Wherever the new Civil Code (hereafter: NBWNA) will substantially alter an existing situation, this will be indicated.

7. One or two specific measures relating to the rights of children (and young people) have already been incorporated into the legislation of the Netherlands Antilles. The following rights, for example, have been included into the Constitution of the Netherlands Antilles (Bulletin of Acts and Decrees 1955, 136):

- freedom of expression in the printed media (art. 8);
- the right to instigate legal proceedings (art. 9);
- freedom of association and peaceful assembly (art. 10);
- the right to privacy (arts. 107, 108);
- freedom of religion (art. 123);
- the right to education (art. 140).

8. The government is currently reviewing various areas of policy, including education and childcare. Special attention has also been given to youth policy. The government has devised a clear policy for tackling the youth problem with a view to promoting the development of young people.

9. In March 1997, the "*Hubentut, Nos futuro*" (Youth, Our Future) conference took place, and was attended by delegates from all tiers of government in the Antilles (both the central and island territory authorities) and the Dutch Minister of the Interior and Kingdom Relations. During the conference, an administrative framework was devised for an integrated Antillean youth policy. The results of the conference were used to assist the compilation of a "Draft National Youth Policy Programme". Following a series of rounds of talks and amendments, the draft programme was approved by all the relevant Antillean authorities at a meeting of the Netherlands Antilles Youth Consultation Forum (JONA) in December 1998, and was subsequently formalized into the National Youth Policy, which consists of three elements: Key Issues, Programme and Implementation.

10. The National Youth Policy Programme brings together the national and island governments in a new partnership in which the island territories are responsible for the management and implementation of education and (non-judicial) youth services, while central government, on the basis of its responsibility to protect the rights of the child, has a more specific duty to support the island territories, to devise policy and to improve quality, partly through inter-island youth policy development and coordination.

11. The National Youth Policy Programme (1999-2003) provides for an integrated approach to the Antillean youth problem. The government is striving to achieve the following policy objectives over the years in question:

- an efficient and effective youth policy on all the islands;
- strengthening cooperation between the national authorities and the island territories;
- increasing the responsibility of young people themselves;

- encouraging a positive environment for young people to grow up in through parenting support and the revitalization of local neighbourhoods;

- providing support for pupils in high risk situations;

- encouraging the establishment of apprenticeships for young people (combining theory and practice);

- improving judicial and other youth services;

- promoting care for disabled children and their parents on all the islands;

- preparing young people for emigration to the Netherlands and providing support on their return to the Netherlands Antilles.

12. The implementation of this National Youth Policy Programme is based on shared responsibility between the national Government and the island authorities. The island territories will assume responsibility for carrying out Programme projects in their own territories, while the national Government will be responsible for administrative and practical support and for the coordination of policy processes.

13. An integrated youth policy means in theory that problems will be tackled at all levels. However, reality shows that partly due to the deteriorating economic situation in the Netherlands ntilles, this integrated approach cannot be fully implemented without further external financial assistance. In particular, the continued deficiencies in basic services for all young people are severely weakening corrective and anticipatory policy, especially for vulnerable youngsters.

14. A new government took office in November 1999. Its coalition agreement for 1999-2002 stated that the improvement and modernization of education would be its main priority. The government recognizes that education is the vehicle by which knowledge, culture, standards and values can be disseminated to young people. During its present term in office, its goals will include:

(a) Education:

(i) Introducing compulsory basic education for pupils aged from 4 to 15 focusing on education, upbringing and the acquisition of experience;

(ii) Enacting national ordinances, such as the Compulsory Schooling Act, the Special Education Act and the Act to Protect the Rights of Pupils and their Parents;

(iii) Formulating a policy for special education, based on the compulsory education provision;

(iv) Encouraging the social involvement of children as a compulsory part of the secondary school curriculum;

(v) Promoting information and communication technology (ICT) in education;

(b) Culture:

(i) Amending and modernizing national media legislation;

(ii) Setting up a fund for Antillean culture;

(iii) Improving and consolidating the quality of information and communication via the media;

(iv) Completing and implementing media policy and appointing a media council;

(c) Sport:

(i) Formulating a national sports policy in consultation with the sports world;

(ii) Improving the quality of sport;

(iii) Formulating policy and supporting federations involved in the (supplementary) training of athletes and sports leaders;

(iv) Establishing physical education targets for nursery, primary and secondary schools;

(d) Youth:

(i) Introducing awareness-raising programmes on the negative effects of drug abuse and teenage pregnancy;

(ii) Preparing a training programme to improve the prospects of young people who opt for emigration;

(iii) Developing vocational and/or professional education for young people outside mainstream education (drop-outs);

(iv) Ensuring that the various arms of the Youth Council regard the rights of the child and compliance with these rights as an integral part of their brief;

(v) Encouraging partnerships between the government and NGOs engaged in preventive work with youth groups.

15. The current government has adopted the National Youth Policy (1999-2003) in its entirety.

16. It is important to indicate what the various island territories of the Netherlands Antilles emphasize in their youth policy and what difficulties they have experienced.

Curaçao

17. Curaçao's youth policy goals are directed mainly at preventing young people from leaving school without qualifications and at combating unemployment among young people, unhealthy and unsafe neighbourhoods and crime.

18. Problems affecting socio-cultural work include:

(a) Shortage of expertise and implementing capacity;

(b) Staff are almost all employed by the government, which makes it difficult to deploy them in the late afternoon and at weekends;

(c) Difficulty of recruiting teachers;

(d) Shortage of staff;

(e) Lack of funding.

Bonaire

19. Bonaire gives priority to preventing pupils from dropping out of school and at improving the transition from school to work. Prevention of teenage pregnancy is also high on the agenda.

20. Problems include:

(a) Low level of cooperation between the public and private sectors;

(b) Insufficient cooperation between welfare services;

(c) Limited public support for youth policy;

(d) Shortage of qualified staff.

Sint Maarten

21. The goals here focus mainly on youth unemployment and on improving the transition from school to work, while priority is also given to facilitating access to health care and education for the children of unregistered individuals.

22. Problems include:

(a) Insufficiently trained and experienced youth workers;

(b) Insufficient sport and recreational facilities;

(c) The need for after-school childcare.

Sint Eustatius

23. Parenting support is the main goal on Sint Eustatius.

24. Problems include:

(a) Insufficient opportunities for recreational, cultural and sporting activities;

(b) A need for after-school childcare;

(c) Lack of a coordinated policy for socio-cultural youth work;

(d) Shortage of properly qualified staff;

(e) Lack of funding.

Saba

25. Parenting support is also the main goal on Saba.

26. Problems include:

(a) The need for professional supervision for recreational and sporting activities for young people;

(b) Lack of a coordinated policy governing youth centres;

(c) Lack of youth training opportunities in the social and cultural spheres;

(d) Young people are forced to leave the island at an early age to continue their education.

27. The new policy on the youth problem will structurally incorporate the activities and responsibilities of the secretariat of the Task Force for Antillean Youth (hereafter: the secretariat) within the civil service apparatus. The secretariat will then deal with youth matters as a separate bureau directly responsible to the Minister of Education, Culture, Youth and Sport. On 1 January 1999 the bureau assumed the status of a national service. The secretariat is regarded as a centre for technical support, knowledge and expertise in the sphere of national youth policy. To achieve this goal, the secretariat works closely with all the agencies and

ministries and with non-governmental organizations with an interest in youth issues. This cooperation is also used to direct and manage national youth policy. The secretariat also provides support in compiling the separate youth policy plans of the various island territories. Another of the secretariat's responsibilities is to coordinate the funding of youth policy. This centres on consultations with government and semi-government funds, such as the Social Safety Net, the Netherlands Antilles Social Development Fund (SOFNA) and Sede Antia.

28. Other important implementation measures will be discussed below when the individual articles are dealt with.

B. Measures taken or foreseen to make the principles and provisions of the Convention widely known to adults and children alike

29. One of the ways in which the government supplies information to NGOs and/or individual citizens is by disseminating the texts of the Convention. The United Nations material is also broadcast on television programmes. Various government agencies are involved, for example, in activities run by national and island-based youth parliaments and youth summits. Information sessions about the Convention on the Rights of the Child are also organized for parents' committees and platforms in conjunction with the minister responsible for youth affairs.

30. In January 1997, a youth summit was held on Sint Maarten, in which some 300 young people took part. In 1998 a national Youth Summit on Reproductive Health committee, bringing together representatives from the government, NGOs and young people's organizations, was established. Since then various themes have been covered by these youth summits.

31. A youth parliament was held in November 1997 to mark the fiftieth anniversary of the Federation of Antillean Youth Care. The Parliament of the Netherlands Antilles approved a motion adopting the youth parliament's declaration in full.

32. The UNESCO section of the Ministry of Education has developed a project on the rights of the child in collaboration with the Centre for Information and Formation for the Welfare of Children and Adults (SIFMA). This project, which centres on the Convention, was launched in January 1999 on Sint Maarten in the fifth and sixth forms of primary schools and in the first and second forms of secondary schools. The project is intended to make the people of the Antilles aware of the rights of the child. It is also designed to canvass the views of pupils on these rights.

33. SIFMA also regularly disseminates information about the rights of the child via the radio, television and workshops, and every year it issues a poster on the rights of the child in Papiamento and English. The information given out on the radio and television is generally broadcast during November, the month in which the International Day of the Child falls. The rights of the child are presented in a way that is easy to understand and with due regard for local circumstances. Efforts are being made to encourage other agencies to become more active in this area.

C. Measures taken or foreseen to make the report widely available to the public at large

34. This report will be available to all interested parties.

II. DEFINITION OF THE CHILD

A. Definition of the child

35. The definition of the child is included in article 332 of the BWNA: "Minors are individuals who have not yet reached the age of 21 and who are not and have not been married". Article 233 of the NBWNA lowers the age of majority to 18 and also widens the definition to include "individuals who have been declared of age under article 235ha". Article 253ha of the NBWNA permits 16-year-old females to exercise parental responsibility if they wish to care for and raise a child. The court will only grant such a request if it feels this is in the interests of both the mother and her child.

36. It should be noted that the 1952 Labour Regulations ascribe a different meaning to "children". "Children" here are defined as "individuals of either gender who have not yet reached the age of 14", while "young people" are defined as "individuals of either gender aged between 14 and 18".

B. Age of civil majority

37. Majority is attained when a child reaches a certain age (currently 21, but this has been lowered to 18 in the NBWNA; upon marriage; or, the case of unmarried mothers, through a declaration of majority (art. 233 NBWNA) when they reach the age of 16.

38. Under Antillean law, "majority" means that an individual is fully competent to perform legal transactions and to appear in a court of law. A minor is able to perform legal transactions with permission from his legal representative (parent(s) or guardian) (art. 233 BWNA). Permission can only be granted if the legal representative himself is competent to perform these legal transactions on behalf of the minor. Permission will only be granted for a specific legal transaction or for a specific purpose. Under the BWNA, permission for a specific purpose must be granted in writing.

39. This will be abolished under the new Civil Code. Minors will in future be competent to perform legal transactions unless otherwise specified by law, and permission will be assumed to have been granted to the minor if the legal transaction concerned is normally performed independently by minors at the age in question (art. 234 NBWNA).

C. Legal minimum ages

40. Legal or medical counselling without parental consent. Where children aged between 12 and 16 are to undergo medical treatment, it is necessary to have both their consent and the consent of their parents or guardian. However, in the NBWNA, the consent of the

parents or the guardian will not be required if the treatment is clearly necessary in order to avert serious danger to a minor aged 12-16 or if the minor continues to want to receive the treatment despite the refusal of his parents to give their consent.

41. End of compulsory education. Compulsory education in the Netherlands Antilles ends at the age of 15. Please refer to article 28 in this regard.

42. Full-time employment. Under article 1613g of the BWNA, a minor requires the consent of his or her legal representative (normally his or her parents); this consent is, however, presumed to have been given if the minor has worked for four weeks without any objection from his or her legal representative. There are proposals - which have not yet been submitted to parliament – stating that individuals aged 16 or over may enter into an employment contract without the consent of their parents. However, a child is obliged by law to attend school until the age of 15. This is dealt with in more detail under article 28, paragraph 1 (b).

43. Hazardous employment. Please refer to article 32.

44. Sexual consent. Under Netherlands Antillean law, no parental consent is required for minors to become sexually active. However, the Criminal Code of the Netherlands Antilles (WvSrNA) imposes a maximum penalty of 12 years' imprisonment for sexual intercourse with girls under 12 (art. 250).

45. Marriage: The legal age for marriage for boys is 18 and for girls 15 (art. 78 BWNA). Under the NBWNA, it will be 18 for both sexes. This requirement does not apply if both are aged 16 or over and the woman can produce a doctor's certificate stating that she is pregnant or has already given birth to a child. Under the BWNA, legitimate minors may not marry without their parents permission; illegitimate minors may not marry without the permission of their natural parents (art. 84 BWNA). Article 91 of the BWNA states that until the age of 23, legitimate children must seek permission from their parents before marrying, provided the latter are competent to exercise parental authority at the time of the marriage.

46. Voluntary enlistment in the armed forces. Please refer to article 38.

47. Conscription into the armed forces: The age for enlisting in the armed forces is 18 years.

48. Freedom to testify before a court of law. Under the BWNA and the Code of Criminal Procedure (WvSvNA), a child under the age of 15 may not take an oath (but may testify). Under article 156, paragraph 3, of the new Code of Civil Procedure (NWvBRvNA) a witness who has not yet reached the age of 16 or a witness who is unable to adequately comprehend the meaning of the oath is not required to take an oath. He or she is then warned to tell the whole truth and nothing but the truth. If evidence is accepted in part on the strength of the witness's statement, the court's ruling must specifically state why.

49. Criminal liability. Young people who have not yet reached the age of 12 when they commit an offence (i.e. a criminal offence) may not be prosecuted. However, in appropriate circumstances a child may be arrested and asked by an investigating officer to give his or her name. The child may also be questioned and searched and his or her possessions may be

confiscated. More far-reaching measures such as police custody and remand in custody are not possible. In such cases the public prosecutor does not have the right of prosecution. If charges are brought, the court is required to rule the case inadmissible.

50. Consumption of alcohol or other controlled substances. The sale of alcohol to a child aged under 16 carries a custodial sentence of up to three weeks or a fine of up to NAFL 300 (art. 475 WvSrNA).

III. GENERAL PRINCIPLES

A. Non-discrimination (art. 2)

51. The government refers to the fundamental right of equal treatment laid down in article 3 of the Constitution of the Netherlands Antilles, which states that any person in the territory of the Netherlands Antilles is entitled to protection of their person and goods. Of course, it is not only a matter of the right to the protection of persons and goods. The thrust of the article is that all individuals are equal before the law.

52. Furthermore, under article 43 of the Charter of the Kingdom of the Netherlands, it is the duty of each of the countries to promote the observance of fundamental human rights and freedoms, legal certainty and good governance. Any individual who believes that he has been afforded unequal treatment and has therefore suffered discrimination may have recourse to a court of law.

53. The non-discrimination provision does not require equal treatment if there is an objective justification for a difference in treatment. Moreover, it is necessary first of all to ascertain whether the distinction made in a particular case did not after all serve a reasonable object and was accordingly not disproportionate (requirement of proportionality).

54. Discrimination on the ground of race, religion or conviction is a criminal offence in the Netherlands Antilles under the Criminal Code. The government refers in particular to article 95c of the WvSrNA which provides that: "Discrimination or discriminating means every form of distinction and exclusion, limitation or preference which is intended to prevent or undermine the recognition, enjoyment or exercise on an equal footing of human rights and fundamental freedoms in the political, economic, social or cultural fields or in other areas of public life or which may have this result."

55. The fundamental rights and freedoms which are enshrined in the Constitution of the Netherlands Antilles include the protection of persons and goods; freedom of the printed press; the right to submit petitions; the right of association and peaceful assembly; protection of property, of dwellings and confidentiality of correspondence; freedom of religion and freedom of education.

56. The Netherlands Antilles is, through the Kingdom of the Netherlands, party to various international conventions such as the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Elimination of All Forms of Racial Discrimination, the

Convention on the Elimination of All Forms of Discrimination against Women and the (European) Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).

57. The ban on discrimination, which is also enshrined in the ICCPR and ICESCR, means that the distinction that is currently made between legitimate and illegitimate children should be removed from the Antillean legal system. This has been done in the NBWNA.

B. Best interests of the child (art. 3)

58. Although parents must assume prime responsibility for their children, there are also judicial institutions, administrative authorities or legislative bodies and other public or private social welfare agencies where the interests of the child must take priority. For these organizations, the interests of the child are not merely an initial consideration but their main concern. If there is a conflict of interests, the interests of the child will generally take precedence. This is particularly important with regard to decisions by the agencies mentioned above, such as those contained in article 359 of the BWNA (divestment of parental authority).

59. The court of first instance can place a child under supervision if that child is regarded as being at moral or physical risk (art. 347 BWNA). Under article 359 of the BWNA, the court of first instance can divest a parent of authority over one or more of his or her children, provided this does not compromise the interests of the child, on the grounds that he or she is unfit or unable to fulfil his or her obligation to care for and raise that child. If the court of first instance feels it is necessary in the interests of the child, it can permanently divest a parent of authority over one or more of his or her children (art. 362 BWNA).

60. Under article 3, paragraph 3, of the Convention, States parties must ensure that the various agencies satisfy the statutory norms governing safety, health, number and suitability of staff, as well as competent supervision. These requirements are met by the Antillean statutory regulations, and are guaranteed by or pursuant to the Guardianship Boards Decree 1970 (Official Bulletin of the Netherlands Antilles 1970, 111), among other regulations.

C. The right to life, survival and development (art. 6)

61. The birth of a child brings with it certain rights and obligations, which in some cases apply even before birth. Article 3, paragraph 1, of the BWNA specifies that the unborn embryo must be regarded as a living creature if this is in its interests. This would apply, for example, if the father dies before the child is born. The unborn child will then be entitled to part of the father's estate. However, if a child is stillborn, it is regarded as never having lived (art. 3, para. 2, BWNA).

62. Both the birth and death of a child must be notified to the registrar of births, marriages and deaths (arts. 21 and 44 BWNA).

63. The right to life is also protected by the provisions contained in the WvSrNA, such as the general provisions governing murder, mothers who deliberately cause the death of their child and individuals who cause the death of a child before or after birth with or without the mother's consent.

D. Respect for the views of the child (art. 12)

64. There are various areas in which Antillean law reflects respect for the views of the child. For example, in adoption cases, children aged 14 and over have the right to be heard by a court of law before it takes a decision (art. 331a, para. 4, BWNA). Under the NBWNA, children aged 12 and over have the right to be heard by the court. Article 809 of the NWvBRvNA also states that children of 12 and over must be heard in decisions that affect parental responsibility. The law has chosen the age of 12 because it is regarded as an age at which children are generally "able to form their own views". Courts are also empowered to hear children under the age of 12, and sometimes avail themselves of this power.

Family

65. In most families it is now considered normal for children to express their views on subjects that concern them and for their views to be taken into account. Although parents continue to have ultimate responsibility for the child, they also have a duty to explain to their children why they have taken a particular position and why certain things are possible and others are not. In this way, children can learn that their involvement and contribution are appreciated. This is reflected in articles 1:247 and 1:249 of the NBWNA.

The right to be heard in legal proceedings

66. A number of legal provisions in the NBWNA and the NWvBRvNA specify that children should be heard in certain situations, either to discover their opinion or to obtain their consent. In general, a minor aged 12 or over should be given the opportunity to inform the court of his or her opinion on matters of general relevance and on particular matters such as a decision to be taken regarding custody, control of his or her property, access and contractual capacity. The court is also empowered to allow children under the age of 12 to make known their views on a matter requiring a decision (art. 809 NWvBRvNA).

67. The views of children, particularly younger children, may also be disclosed in the report of the childcare and protection board. Minors aged 12 and over are entitled to inspect - and obtain a copy of - court documents in a case concerning them, unless the court considers that they are unable to form a reasonable judgement of their own interests. Where a child is to be adopted or paternity is to be acknowledged, the consent of the child is required if it has attained the age of 12 (arts. 1:228 and 1:204 NBWNA). A child aged 12 or over and a child that has not reached this age but has a sufficient understanding may apply to the court for access to a parent or for information to be given to a parent concerning its well-being. It may also apply for an order that the parent not having parental responsibility be consulted by the other parent about major decisions concerning the child (art. 1:377g NBWNA).

68. The power to act independently in law is also laid down in the new Civil Code in respect of agreements for medical treatment entered into by 16- and 17-year-olds on their own behalf (arts. 7:447 and 7:450 NBWNA). In other respects, the basic principle will continue to be that where there is a dispute between a minor and his or her parents or guardian, the minor's interests will be looked after, both in law and otherwise, by a special representative. This may happen whenever a conflict of interests arises between a child and its parents or guardian, provided that it is of a substantial nature. The special representative may also act for the minor in a conflict with a third party in which the parents or guardian are unwilling to represent the minor (art. 1:250 NBWNA).

IV. CIVIL RIGHTS AND FREEDOMS

A. Name and nationality (art. 7)

69. Each child is registered immediately after birth, and has the right from birth to a name and a nationality. The arrangement governing the right to a name and nationality is such that the child always has a name and nationality.

The right to a name

70. Each child must be registered immediately after birth and given a name. The individual who is recognized under family law as the child's father or who intends to acknowledge the child and thus establish a family-law relationship noted on the birth certificate must register the child within five days of the birth date. If the father is absent or unable to register the birth, the child can be registered by the mother or another individual who was present at the birth (arts. 21 and 22 BWNA).

71. If a child is born at sea, the birth must be registered in the ship's log within 24 hours of the birth by the captain or officer in command, in the presence of the father, if he is on board, and two witnesses who are travelling on board the vessel (art. 27 BWNA). Failure to register the birth constitutes an offence (art. 467 WvSrNA).

72. The birth certificate will state the given names of the child. Legitimate children, and illegitimate children who are acknowledged by the father, will bear the family name of the father. Illegitimate children who are not acknowledged by the father will bear the family name of the mother (art. 54a BWNA). Individuals whose family name or given names are not known can seek permission from the Governor to adopt a family name or given names (art. 56 BWNA).

The right to a nationality

73. The right to Dutch nationality is enshrined in the Netherlands Nationality Act. A child acquires Dutch nationality if its father or mother is a Dutch national at the time of its birth. This also applies if the father died before the birth. A child found in the Netherlands, the Netherlands Antilles or Aruba or aboard a maritime vessel or aircraft registered in the Netherlands, the Netherlands Antilles or Aruba is registered as the child of a Dutch national unless it emerges within five years from the date on which it was found that the child had another nationality at birth. The child of a father or mother who was living in the Netherlands,

the Netherlands Antilles or Aruba at the time of its birth, and who were themselves born to a mother who was residing in one of those countries is also regarded as a Dutch national (art. 3 Netherlands Nationality Act).

74. Minors who are non-Dutch nationals can obtain Dutch nationality through naturalization or through legitimation by a Dutch citizen. Children of individuals who have acquired Dutch citizenship by naturalization or legitimation also automatically qualify for Dutch nationality (art. 4 Netherlands Nationality Act). Children who are legally adopted in the Netherlands, the Netherlands Antilles or Aruba automatically acquire Dutch nationality if the adoptive father or mother was Dutch on the date when the adoption order became final and if the children in question were minors on the date when the order was made at first instance. Children of individuals who acquire Dutch nationality by adoption are also Dutch nationals (art. 5 Netherlands Nationality Act).

75. Stateless minors who are born in the Netherlands, the Netherlands Antilles or Aruba and have lived or had their actual residence there for at least three years may acquire Dutch nationality. The legal representative of the child must submit a declaration for this purpose (art. 6 Netherlands Nationality Act). Minors share Dutch citizenship if their father or mother is naturalized (art. 11 Netherlands Nationality Act).

The right of a child to know its parents

76. The right of a child to know its parents is fulfilled automatically if the child grows up with its parents. This is the most common situation. The child's mother is the person who has given birth to it. The identity of the father has been discussed above in relation to the right to a name. It follows from this arrangement that the natural father is not necessarily the legal father. For example, a sperm donor - i.e. a man not married to the woman who gives birth to the child, but who has supplied sperm - is not in principle the legal father. The question arises of whether the child is entitled to know the name of the donor. The Supreme Court handed down a judgement on this matter in 1994 (Supreme Court, 15 April 1994, NJ 1994, 608). The judgement stated that "the general right of personality underlying such fundamental rights as the right to respect for privacy, the right to freedom of opinion, conscience and religion and the right to freedom of expression also includes the right to know the identity of the parents from whom one is descended". The Supreme Court referred to article 7 of the Convention on the Rights of the Child. It continued that "the right to know the identity of the parents from whom one is descended is not absolute. This right must yield to the rights and freedoms of others if they weigh more heavily in a given case." This means, for example, that the interests of the mother and those of the donor must also be taken into account.

77. In the case of adoption, it is standard practice for the child to be informed about its natural parents. The adoption court checks that this has been done.

78. The NBWNA regulates that paternity may be denied by the father, the mother and the child if the father is not the biological father. In addition, the NBWNA provides that paternity may not be established by voluntary acknowledgement without the consent of the minor if he or she is aged 12 or over.

B. Preservation of identity (art. 8)

79. Following its birth, a child is both free and entitled to enjoy its civil rights (art. 2 BWNA). Children have the right to a name and a nationality. Both the given name and the family name provide the child with its own identity (for further observations on the law of names, see the comments above under article 7 of the Convention).

80. Given names can be altered at the request of the individual concerned or his legal representative, upon application to the court of first instance (art. 60 BWNA). Permission to change a surname must be sought from the Governor (art. 55 BWNA).

81. A child has a family-law relationship with its parents and blood relations. When a child is adopted, these family-law relationships cease. Adoption is regulated by law and is granted in cases where it is manifestly in the interests of the child (art. 331a BWNA).

82. If there are errors on a birth certificate or if such a certificate is incomplete, the court of first instance can recommend amendments or additions at the request of interested parties or in response to an application from the public prosecution service.

C. Freedom of expression (art. 13)

83. The fundamental rights and freedoms enshrined in the Constitution of the Netherlands Antilles apply equally to children and to adults. Article 8 states that individuals do not require permission to express views and opinions in the printed media provided they do not violate the law by doing so.

D. Access to information (art. 17)

84. Children initially acquire information from their parents and through their education. They also have access to information through the media (newspapers, radio and television) and through the Internet. In the Netherlands Antilles, children are encouraged to borrow and read books from public libraries. Library-joining fees are either low or are waived in order to widen user access to the libraries.

85. New provisions governing the protection of young people from unsuitable programmes are due to be introduced into Netherlands Antilles law (Media Bill). The new legislation in this area is in line with UNESCO recommendations on a free press.

86. Article 18, paragraph 2b, of the Media Bill prohibits the transmission of programmes or programme elements which could seriously damage the physical, mental or moral development of minors. It therefore constitutes a blanket ban. Article 18, paragraph 3, also imposes a ban in principle on programme elements which, while they may not seriously damage minors, could nevertheless cause some damage. This ban does not apply if such programmes are broadcast at times when minors would not normally be listening or watching, or else are subject to technical measures that tend to prevent minors from being exposed to them. The fourth paragraph of the same article provides for general national measures to include more specific rules governing the

transmission of certain programme elements. This makes it possible to prevent young people from being inadvertently exposed to programmes not intended for them which could be damaging.

E. Freedom of thought, conscience and religion (art. 14)

87. The government considers that as long as a child cannot yet be deemed to be able to form its own opinions, the parents or guardian may decide on the religious education of their children as they see fit. As soon as children are capable of forming their own opinions, however, parents or legal guardians must respect these opinions even if they are not in keeping with their own. The government believes that article 14 of the Convention should be widely interpreted. This article deals, after all, not only with freedom of thought, conscience and religion but also with the freedom to adopt a religion or beliefs. This is in accordance with the provisions of article 18 of the ICCPR.

88. These rights are enshrined in articles 123 to 127 of the Constitution of the Netherlands Antilles.

F. Freedom of association and of peaceful assembly (art. 15)

89. The rights to freedom of association and to peaceful assembly and demonstration are regarded by the Government as essential to the functioning of democracy in the Netherlands Antilles. If these rights could not be exercised, the participation of citizens in the political decision-making process would be virtually impossible.

90. The right of association and of peaceful assembly is enshrined in article 10 of the Constitution of the Netherlands Antilles. This right applies to both adults and children. Its exercise can be restricted by national ordinance in the interests of public order, morals or health.

G. Protection of privacy (art. 16)

91. The Constitution of the Netherlands Antilles dates from 1955, and as a result, this right was not originally included in it. However, the right to privacy, as enshrined, inter alia, in the ICCPR (art. 17) and the ECHR (art. 8), does nevertheless apply in the Netherlands Antilles, since international conventions take precedence over national law.

92. As regards confidentiality of correspondence, article 108 of the Constitution of the Netherlands Antilles states that the confidentiality of correspondence entrusted to the postal service or other public institutions for dispatch is inviolable, unless otherwise specified by a court order.

H. The right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment (art. 37 (a))

93. Article 37 contains various guarantees relating to custodial sentences for children. Paragraph (a) sets out provisions governing the treatment of children serving custodial sentences, with which Netherlands Antilles legislation and practice comply. Life imprisonment is in theory

only possible for children between 16 and 18 subject to article 41 septies, paragraph 5, of the WvSrNA, whereby adult criminal law can be applied. However, such sentences can at all times be reduced by means of a pardon. Netherlands Antilles law also accords with the provisions of the Convention in this regard. As far as is known, however, this provision has never been exercised in the Netherlands Antilles.

94. Through the Kingdom of the Netherlands, the Netherlands Antilles is party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

Juvenile criminal law

95. The Netherlands Antilles runs a corrective institution for young offenders (GOG), a residential institution administered by the Minister of Justice. It is responsible for, among other things, the re-education of boys and girls under the age of 16 who have committed a crime or who have behavioural problems.

96. These juveniles are allowed a one-to-one interview with a counsellor, children's judge, public prosecutor or other relevant third party and/or to conduct correspondence on their case. As soon as the judicial investigation allows, each juvenile is allowed to take part in all the social work programmes offered by the GOG. Personal details or information about the juvenile are not made available to non-competent authorities.

V. FAMILY ENVIRONMENT AND ALTERNATIVE CARE

General introduction to article 5, article 18, paragraphs 1 and 2, and article 9

97. In 1997, the government issued a memorandum on the family in the Netherlands Antilles. This memorandum seeks to create a practical framework for a proposed long-term policy to help families fulfil their basic responsibilities.

98. Family policy on the Netherlands Antilles is based on the following core principles:

1. The family in all its forms has a right to statutory recognition and protection.

2. The core principle of "empowerment" in the government's social development and welfare policy implies that families must be helped in every way to fulfil their basic responsibilities as best they can.

3. Equal norms and values between parents and children.

4. While a child is of compulsory school age, the school must also be a key centre for education and upbringing.

5. The public-private partnership model, in which all sectors of the community share responsibility for the creation of a family and child-friendly society, must be applied.

99. In practice, an increasing number of families on the Netherlands Antilles are finding it extremely difficult to fulfil their basic role of educating and raising their children. Since there is insufficient qualitative information about the situation of families on the Netherlands Antilles, the memorandum sets a provisional short-term goal for family policy. As a result, there is no comprehensive or cohesive overview of all aspects of family issues on the Netherlands Antilles.

100. Family policy will, therefore, for the time being be geared towards strengthening the basic role of families on the Netherlands Antilles, namely to educate and raise their children. A number of specific measures, activities and projects have been proposed to achieve this goal: these include the introduction of flexible working hours; the introduction of "family life education" in the school curriculum; research on the feasibility of parental leave for public servants; and statutory regulation to guarantee parents pre-school education and after-school care.

101. In 1996 and 1997, the government of the Netherlands Antilles subsidized activities promoting education and care for children up to the age of four in all the island territories, through a grant to SIFMA. SIFMA also holds regular workshops, lectures and parents' meetings on themes such as "Parental involvement in our schools", "How to deal with aggression in pre-school age children" and "Encouraging positive behaviour in your children".

A. Parental guidance (art. 5)

102. The duty of parents to care for and raise their children is anchored in law in the Netherlands Antilles (art. 338 BWNA). The law also states that this obligation applies to both parents: during their marriage, the parents share parental authority (art. 339 BWNA). Only in cases where it is impossible for one of the parents to exercise parental authority does the law allow it to be exercised by only one.

103. "Parental care and education" means that both the mental and physical well-being of the child must be catered for. It also includes promoting the development of the child. When carrying out their parental duty, the parents must respect fundamental human rights, which also apply to children. This includes the right of every individual to be treated with respect.

104. On the basis of their authority, the parents are also entitled to take any measures they regard as necessary, appropriate or desirable to further the interests of their children. Parental authority also gives the parents the right to administer their children's assets. However, the law obliges them to exercise this right prudently (with due care and consideration), and makes them liable for any losses sustained due to poor management.

105. In the NBWNA, the term "parental authority" is replaced by the term "parental responsibility". The responsibility exercised by parents will always therefore be termed parental responsibility. The NBWNA will give a more contemporary interpretation to the content and scope of parental responsibility.

106. Netherlands Antilles civil law allows minors who are not under parental authority to be placed under the supervision of a guardian. Unless otherwise specified by law, guardianship involves a first and a second guardian. Guardianship comes into being:

(a) By operation of law: for example, in the event of the death of one or both parents, or if a child is illegitimate;

(b) By parental nomination: for example, in the event of the death of one parent;

(c) By a decision by the court of first instance; for example, if a parent or guardian is temporarily prevented from exercising his or her responsibility or if the existence or whereabouts of the parent or guardian is unknown (art. 373 BWNA).

107. As with parental authority, the guardian has a duty to care for and raise the minors entrusted to him. The guardian represents the minor in civil matters and also administers his or her assets. Like the parents, the guardian is also obliged to do so with due care and consideration, and is liable for any losses sustained through poor financial management.

B. Parental responsibility (art. 18, paras. 1 and 2)

108. See A. Parental guidance (art. 5).

109. The joint responsibility of both parents in raising their child is set down in article 339 of the BWNA. In the NBWNA, this shared responsibility will continue even after divorce, unless one of the parents requests otherwise.

110. If only the identity of the mother is known, or if the father and mother have not been married to each other and are not jointly exercising parental responsibility, the mother automatically exercises legal responsibility over the child, unless she was incompetent to exercise this responsibility at the time of the birth. A mother who was incompetent at the time of the birth is awarded responsibility automatically as soon as she is competent, unless it has already been awarded to someone else. If this is the case, the mother can apply to the court of first instance to claim responsibility for her child.

111. If a guardian has responsibility for the child, a mother's application will only be denied if there is good reason to fear that the interests of the child would be compromised if it were upheld. Following the death of one of the parents, the surviving parent will automatically have responsibility for any children as specified in the BWNA, if and insofar as he/she is already exercising this responsibility at the time of his/her partner's death.

112. If a parent with sole responsibility for a minor dies, the court of first instance will transfer responsibility to the surviving parent or to a third party. The court will do so either ex proprio motu or at the request of the Guardianship Council or the surviving parent. An application for responsibility to be awarded to the surviving parent will only be refused if there is good reason to fear that the interests of the child would be compromised if it were upheld. This would apply if the deceased parent has appointed a guardian in his or her will.

Through the will, the deceased parent can specify who will subsequently be responsible for his or her children in the role of guardian. Antilles law thus gives priority to parental responsibility over that of a third party/guardian.

113. Although the text of the law does not exclusively state that the primary interest of both parents must be the interests of the child, this can nevertheless be inferred from article 338 of the BWNA: "Parental responsibility encompasses the duty and the right of the parent to care for and raise his or her child. The terms 'care for' and 'raise' include care and responsibility for the psychological and physical well-being of the child and efforts to further the development of his or her personality". This article applies equally to guardians and other individuals who are in a position of responsibility for the child.

114. Article 18, paragraph, 2 of the Convention states that in order to guarantee the rights set out in the Convention, the State must assist parents in the performance of their child-rearing activities.

115. Central government awards subsidies to help parents raise their children, based on the assertion that the parents are the primary carers.

116. The island territory of Curaçao runs a programme entitled "Eduká Dediká" ("Education with Dedication"), which is administered by SIFMA. This programme is made up of various components: school radio and TV programmes, educational articles in the newspapers, books for parents and children and leaflets on child-rearing. Counselling is also offered to groups of parents through crèches, schools and community centres.

117. SIFMA is running a similar programme on Sint Maarten. It was launched in January 1998 and reaches a large number of parents. It also works with other NGOs and government agencies.

C. Separation from parents (art. 9)

118. A child may only be separated from its parents if its interests are served by doing so. This may be the case if it is threatened with moral or physical danger, if it is being abused or neglected by its parents or if the parents are living separately. Under Antillean law, cases of possible abuse or neglect of a child by its parents are submitted to a court (arts. 359 et seq., 424 (guardianship) BWNA).

119. The criminal law can only be brought into play if the offence is one defined in the WvSrNA. A child protection order can only be made if the grounds cited in the Civil Code are applicable (e.g. art. 360 BWNA (divestment of parental authority with consent) and article 362 BWNA (withdrawal of parental authority)).

120. Netherlands Antilles law allows the parties concerned to take part in the proceedings and to present their case. Under family procedural law, the parents, guardians of minors and other interested parties such as the Guardianship Council, plus also minors of 12 years and over, must

be heard or summonsed in cases relating to parental authority, guardianship or legal capacity for minors. The same applies to adoption and access cases. Netherlands Antilles law therefore satisfies the provisions of the Convention in this regard.

121. In terms of paragraph 3, it should be noted that following a divorce, the child is entitled to contact with the parent who has not been granted parental responsibility. The court may deprive this parent of access only if:

- access would seriously compromise the mental or physical well-being of the child;
- the parent is deemed to be manifestly unsuitable or unable to handle such access;
- a child aged 12 or over has indicated during the court hearing that it has serious objections to contact with this parent and the court takes these objections seriously;
- access would be contrary in some other way to compelling interests of the child.

122. A child aged 12 and over - or a younger child who is able to form a reasonable assessment of its own best interests - may apply to the court to be granted contact with the parent who has not been granted parental responsibility. He or she may also ask the court to direct that the parent not exercising parental responsibility be kept informed about him or her or be given a say in major decisions concerning his or her upbringing.

Decisions in the context of aliens policy

123. Child protection measures. Under aliens policy, the right of a child and/or one of its parents to remain in the Netherlands Antilles may end if the conditions for residence are no longer satisfied. For example, following a divorce, one of the parents may leave the Netherlands Antilles. In such cases, it is necessary to determine whether a child born to the couple may remain in the Netherlands Antilles or must return with the parents (or one of them) to the country of origin. A similar situation arises when a child is born out of wedlock and the parents subsequently cease cohabiting. Depending on the personal circumstances, it is necessary to assess in each case whether termination of the right of residence of one or both parents must also result in termination of the child's residence rights and vice versa. When such decisions are taken, the Netherlands Antilles also observes its international obligations arising from, for example, article 8 of the European Convention on Human Rights.

124. Expulsion. The general policy is that if a family has no right - or ceases to have a right - to reside in the Netherlands Antilles and should therefore leave the country, the members of the family are in principle expelled together.

D. Family reunification (art. 10)

125. Under article 10 of the Convention, the signatory States are obliged to process applications to enter or leave the country for family reunification purposes courteously, humanely and quickly. The provision in Antilles law which puts this into practice is the National Ordinance on Entry and Deportation (Official Bulletin 1966,17), subsequently referred

to as LTU. This ordinance has been amended over the years. More detailed provisions were laid down in a National Decree containing general measures of 17 January 1963 (Entry Decree, Official Bulletin 1985, 57).

126. Requests for family reunifications between parents and children who are not residing in the same country (i.e. the Netherlands Antilles) can be made in accordance with articles 6 to 14 of the LTU. These articles govern entry for a temporary stay or a period of residence granted by a residence permit issued by or on behalf of the Minister of Justice. The application for entry is addressed in writing to the Minister of Justice and must be supported by reasons, and is submitted to the Lieutenant-Governor of the island territory where the person in question wishes to stay or reside. The guiding principle of the National Ordinance is that nobody is admitted to the Netherlands Antilles without a (temporary) residence permit. Entry permits can be issued for a specified or unspecified period in accordance with article 6, paragraphs 1 to 8, of the National Ordinance.

127. When issuing an entry permit, the government may impose specific conditions concerning the place of residence, the exercise of a specific profession or business, employment with a specific employer, or related to public policy, public order, public safety, public morals or the public interest. Granting entry to the parents also implies that entry is granted to minor children. Terminating the residence of an individual who has been granted entry either by operation of law or through a permit also implies the termination of residence of the spouse and any minor children.

128. Article 8 of the ECHR, guaranteeing respect for family life, also provides for the reunification of family members.

E. Recovery of maintenance for the child (art. 27, para. 4)

129. Parents are obliged to meet the maintenance costs of their minor children, insofar as they are able. This obligation also applies to a step-parent in respect of the minor children of his/her spouse's previous marriage who form part of his or her family (art. 478 BWNA). The maintenance obligation also applies to a father who has no family-law relationship with his natural children. He is obliged, if there are grounds for so doing, to provide assurances that he will fulfil this obligation or else make over the full amount payable. Maintenance is fixed by the court.

130. An application for the costs of care and education for a minor is subject to a five-year limitation period from the date of birth of the child.

131. If there is no family-law relationship between the minor and his or her father, then the father is only obliged to pay maintenance during the minority of the child. Exceptions to this regulation include cases where the child is incapable of providing for him or herself due to mental or physical disabilities (art. 269, para. 2, BWNA).

132. If a parent or step-parent fails to fulfil or to fulfil adequately his obligation to pay for the maintenance of his minor children, the Guardianship Council or the individual with

responsibility for the child can ask the court of first instance to fix the amount that this parent or step-parent should pay on behalf of the child (art. 480 BWNA). If a father has no family-law relationship with the child, the aforesaid provision will not apply to him.

133. The Netherlands Antilles are bound by various conventions on maintenance. Three conventions that are of particular importance to the recovery of maintenance abroad are the Convention on the Recovery of Maintenance Abroad, concluded in New York on 20 June 1956, the Convention on the Recognition and Enforcement of Decisions relating to Maintenance Obligations to Children, concluded in The Hague on 15 April 1958, and the Convention on the Recognition and Enforcement of Decisions relating to Maintenance Obligations, concluded in The Hague on 2 October 1973.

F. Alternative special care and protection (art. 20)

General: available facilities

134. Under Antillean civil law, guardianship of minors can be entrusted to charitable associations, foundations or institutions which have the status of a legal entity, are registered in the Netherlands Antilles, and are tasked by their constitutions with the long-term care of minors (arts. 397-401 BWNA). This means placement in a residential institution or foster family. When entrusting a legal entity with guardianship of a minor, the court takes into account the religious convictions of the child and the family of which it is a member. When placing minors in a residential institution or a foster family, the legal entity concerned is obliged to notify the Guardianship Council in writing as to where the minors in question are residing. Unless the law specifies otherwise, legal entities entrusted with guardianship have the same powers and obligations as other guardians. A minor entrusted to a legal entity may not be taken out of the Netherlands Antilles without permission from the court of first instance. This permission will only be granted if the court of first instance judges that the relocation is in the interests of the minor.

135. Various facilities are specifically designed to promote the development of minors in various spheres. These spheres include most notably: family, school, work, churches and recreation.

G. Adoption (art. 21)

136. Adoption of children in the Netherlands Antilles is subject to legal guarantees of the rights and obligations of both the adoptive parents and the adopted children (arts. 331a-331f BWNA). Under Antillean civil law, a competent authority must be designated at the time of an adoption. The law also defines the conditions governing adoption and the family-law consequences of adoption, both for the adopted child and its adoptive parents.

137. Under the BWNA, an adoption can only go ahead if it is in the general interests of the child (art. 331a, para. 2, BWNA). Adoptions take place by judgement of the court of first instance in response to an application by a married couple.

138. In the Netherlands Antilles, a step-parent or a lone parent cannot yet adopt a child. Both types of adoption will be included in the NBWNA under the heading "lone parent adoption".

139. Article 331b of the BWNA specifies that the child to be adopted must be a minor on the date when the application is submitted. The child may not be the legitimate or illegitimate child of either of the adoptive parents.

140. Adoption gives the child the status of the legitimate child of the adoptive parents, while at the same time the family-law relationships between the adopted child and its relations by blood and marriage cease to exist. The consequences of adoption take effect on the date from which the judgement is given.

141. The BWNA allows adoptions to be revoked. An adoption can, for example, be revoked at the request of the adopted child when he or she comes of age (i.e. 21). The court will only uphold the request if this is in the interests of the child. Revocation of adoption means that the child loses the status of the legitimate child of the adoptive parents and that the family-law relationships between the child and the "original" relations by blood and marriage are restored.

H. Illicit transfer and non-return (art. 11)

142. Article 11 paragraph 1, allows States parties to take measures to combat the illicit transfer of children abroad and the failure to return children to the Netherlands Antilles. Under paragraph 2, States parties promote the conclusion of relevant bilateral or multilateral agreements or accession to existing agreements. Implementing legislation which will eventually allow the application of the Convention on the civil aspects of international child abduction is being drafted.

I. Protection from abuse and neglect (art.19)

143. In order to protect children whose physical and psychological well-being is seriously threatened by extreme neglect and abuse, Antillean civil law allows the court of first instance to place such children under a supervision order (arts. 347-358 BWNA). This can be done at the request of one of the parents, a relation by blood or marriage (up to four removes), the Guardianship Council or the public prosecution service.

144. In the event of a supervision order, the court of first instance appoints a family supervisor to supervise the child in accordance with guidelines drawn up by the court. The role of the family supervisor is to promote the general well-being of the child, both by advising the parents on how best to raise and care for their child, and by encouraging them to do all that is necessary to achieve this end. For their part, the parents are obliged to follow all the recommendations made by the family supervisor.

145. The maximum term of a supervision order is one year. The court of first instance can, however, extend this term by periods of one year, or the court can lift the supervision order at any time. It automatically ends when the child reaches its majority.

146. If a child's home life is seriously threatening its psychological well-being, the court of first instance can decide to remove it from its home and place it in a residential facility or foster home. Such care orders also last up to one year, can be extended by one year at a time, and can also be shortened at any time.

147. The court of first instance can also divest a parent of authority over one or more children if it deems this necessary, on grounds including:

(a) Misuse of parental authority or serious neglect of the care or upbringing of one or more children;

(b) Reprehensible behaviour;

(c) A conviction by final and conclusive judgement for certain offences;

(d) Serious failure to comply with the instructions of the family supervisor or an attempt to prevent the placement of a child in an observation unit or an institution designated by the court;

(e) Good reason to fear that the interests of the child are being neglected because the parent is removing, or demanding the removal of, the child from third parties who have assumed responsibility for his or her care and upbringing (art. 362 BWNA).

148. Finally, the Juvenile and Vice Police (KZP) are called in to deal with cases of child abuse, missing children and similar child-related problems. Where necessary, these children will be placed in residential facilities or foster homes.

149. Youth services are designed to create more opportunities for the optimum growth and development of juveniles in problem situations. Youth services are divided into judicial and non-judicial services. They provide a safety net for young people excluded from, or threatened with exclusion from, parental care or schooling. Current youth services are inadequate, both in qualitative and in quantitative terms. These shortcomings are reflected in intake, diagnostics, indicators, the allocation of help, the assistance process and after-care. At present, youth services are not giving enough attention to:

- physically and psychologically abused children;
- young drug users;
- rehabilitation facilities for young delinquents.

150. With regard to care in general, the authorities will be taking steps to create a structure within the subsidized care sectors to improve the quality of care, to coordinate care and to boost efficiency through the conclusion of care contracts with, for example, institutions providing care for the disabled, youth services, childcare agencies, organizations for women's development, district nursing/home care, and organizations providing care for the homeless and drug users.

151. Developments within youth services show that those working in the field recognize the need for change. One specific illustration of the desire to improve cooperation is the project to restructure Non-residential Youth Services (AJHV). It is important for the AJHV to improve their structure in order to promote cohesion and cooperation, boost the effectiveness and efficiency with which the AJHV respond to requests for help and incorporate preventive activities as an integral part of their work.

J. Periodic review of placement (art. 25)

152. Article 25 concerns the rights of a child who has been placed by the competent authorities in an institution for the purpose of care, protection or treatment in connection with his or her physical or mental health, the regular assessments of the treatment afforded to that child, and all other circumstances relevant to the placement. Specific attention is given to these rights in the context of youth services.

153. See above under I. Protection from abuse and neglect.

VI. BASIC HEALTH AND WELFARE

A. Survival and development (art. 6, para. 2)

154. See under III.C (Right to life, survival and development) and under V.B (Parental responsibility), which refer to the provisions in the Criminal Code concerning the protection of the unborn child, and to provisions in the Civil Code concerning the rights and obligations of parents in relation to their children.

B. Disabled children (art. 23)

155. In 1994, the Ministry of Public Health and Environment (VOMIL) published a policy document entitled "Care for the disabled in the Netherlands Antilles: policy for 1994-2000". This policy document was an initial step towards formulating a policy on the disabled. The information below is taken from the policy document.

Number of disabled children

156. An overview of the estimated number of disabled children (aged up to 14) in the Netherlands Antilles (N.A.) is given in the table below:

	Curaçao	Bonaire	Saba	Sint Eustatius	Sint Maarten	Total (N.A.)
Visually impaired	53	6	0	0	14	73
Hearing impaired	69	5	0	0	7	81
Physically disabled	164	13	0	2	16	195
Mentally disabled	128	17	0	1	14	160
Total	414	41	0	3	51	509

Source: Policy document on care for the disabled (VOMIL); 1992 census.

Provisions for disabled children

157. Almost every island territory has its own system of provisions for disabled children.

158. On the island territory of Curaçao, there is a single residential facility for disabled children, the purpose of which is to offer nursing and care to physically disabled children. This provision includes a child rehabilitation unit geared towards the rehabilitation and education of physically disabled children.

159. The island has had a residential centre for hearing impaired children since 1993. The aim of this institution is to educate its pupils in such a way that they can play the fullest possible part in society. In order to be able to provide for the needs of hearing impaired children, the centre has signed a cooperation agreement with a school for deaf children in the Netherlands, which supplies advice, supervision and expertise to its partner on Curaçao.

160. Curaçao also has a day centre where children from 3 to 18 with a mental disability engage in meaningful activities on weekdays and where they receive professional care, including special education, counselling, physiotherapy and speech therapy.

161. The island territory of Bonaire has a day centre catering for 15 mentally disabled individuals (both children and adults). The care provided centres on social and educational development and assistance with various activities.

162. Sint Maarten has a small day centre with 28 places for people of all ages (including children) with a mental disability or multiple disabilities. In emergencies, the unit sometimes also admits children with sensory disabilities. The centre is currently struggling with a severe shortage of funds, as a result of which it cannot recruit enough qualified staff.

163. Sint Eustatius still has no separate facilities for disabled children. The district nurse and health care services are the only sources of care to disabled children.

164. The island territory of Saba has one unit for individuals with a mental disability, a day centre with places for only five adults.

165. District nursing units on each of the islands also contribute to the care and nursing of disabled people who are still living at home.

166. See also under article 28 (Special education).

C. Health care services (art. 24)

167. The supply of medicines to all citizens in the Netherlands Antilles, including children, is an integral part of the general health care system. There are no shortages and the pharmacy service is free to the most vulnerable groups in society. There are well-established vaccination programmes directed specifically at infants and toddlers. Most health care programmes offer vitamin supplements during pregnancy. Most health care and health insurance schemes pay for the drugs needed to treat HIV sufferers, including HIV-infected children.

The following details apply only to the largest island in the Netherlands Antilles

168. The youth health care service on Curaçao provides preventive care for young people aged up to 19. The service is the responsibility of and is fully financed by the island territory of Curaçao. The purpose of the youth health care service on Curaçao is to monitor and promote the optimum health, growth and development of infants, children and young people. The care package is offered via the clinics for infants and toddlers (aged up to 4), the school doctor (4- to 12-year-olds) and the adolescent care units (13- to 19-year-olds).

169. The package consists of regular health checks, regular nursing care, sight and hearing tests and development checks, health education, advising parents on childcare and child-rearing, and vaccination against preventable diseases. Home visits are also arranged on medical grounds. Groups are catered for through public activities.

170. Each infant is entitled during its first 14 months of life to at least seven visits to a doctor and 10 to 12 visits to see a nurse. In 1997, 99 per cent of children born on Curaçao were registered at a baby and toddler clinic.

171. The school health care service makes regular visits to nursery schools to carry out health checks or to screen for any health problems that might affect the academic success of the child. Medical examinations can also be arranged at the request of the teacher. Socio-medical activities in secondary schools are still only on a limited scale. Health care information is provided on a wider scale.

172. The vaccination programme for infants and school-age children is the responsibility of the Youth Health Care Unit on Curaçao.

173. Over the next few years, policy proposals relating to youth health care will focus on strengthening the content of care through a further expansion of public activities, the introduction of parenting support in mainstream care and special attention for the care package for school-age children, notably adolescents. Promoting specific expertise among youth health care workers is a key instrument in this regard. By conducting research where necessary and by setting up an information system, it will be possible to monitor the health care situation of young people and the quality of care provided, thereby enabling responsible decisions to be taken on health care priorities and the care package.

174. A priority for youth health care on Curaçao over the next few years will be cooperation and coordination between the various entities, both governmental and non-governmental, which formulate and implement general and specific youth policy.

Child mortality

175. The Medical and Health Care Service (GGD) has established a vaccination programme, carried out by paediatricians and some general practitioners, to reduce infant mortality. Children are vaccinated four times against diphtheria, whooping cough and tetanus (DT), four times with TOPV (Trivalent Oral Polio Vaccine), once against measles, mumps and rubella (MMR) and four times against HIB (haemophilus influenza type B).

176. The main causes of death in the 1-4 age group are genetic defects and traffic accidents. Infectious diseases affecting the intestinal tract, pulmonary circulation problems and heart disorders are the other most common causes. The main cause of death in the 5-14 age group is traffic accidents. Causes of death linked to violence (such as traffic accidents and homicide) are the main causes of death in the 15-24 age category.

Pre-natal care

177. All the islands have district nurses, maternity care, health centres and organized community care by qualified personnel. The number of midwives is beginning to decrease, while gynaecologists provide care both in hospitals and in private practice. It should be mentioned that the islands provide free medical, maternity and post-natal care and free contraceptives for those of limited means.

Obstetric care

178. Obstetric care on Curaçao is mainly given in hospitals and in the home, with first-line care provided by a family doctor or obstetrician. In the event of complications, the patient is referred to second-line care (usually the biggest hospital). Obstetric care in the Sint Elisabeth Hospital (SEHOS) is provided by junior doctors, specialists and occasionally by a general surgeon.

179. On Curaçao, more than half of all births are attended by a specialist or junior doctor. Very few births take place at home. Most deliveries take place in the SEHOS (58 per cent in 1995); 27 per cent of women give birth under first-line care, assisted by a midwife. The rest give birth at home or in smaller clinics.

Infant care

180. Curaçao has five organizations providing infant care. These are the youth unit of the Medical and Health Care Service (GGD) and the district nursing units. A standard care package has been devised for infants of up to four months. This consists of six socio-medical examinations and six regular visits to a nurse. Each nursing visit includes a "Denver screening" (i.e. a development) test. Advice is also given to the parents.

Care for pre-school children

181. Children 14 to 48 months old are entitled to pre-school care. This care package includes five socio-medical examinations including a Denver pre-screening test, advice for parents and the administering of missed vaccinations.

School health care

182. School health care on Curaçao is provided by the youth unit of the GGD. The programme in question applies to children from the age of four who are attending nursery school. The care package consists of regular medical examinations for five and six-year-olds,

and a screening test for 10 and 11-year-olds. Children in the first year of nursery school are given a DT/TOPV vaccination. At the age of 10, they are given a DT/TOPV/MMR vaccination. Socio-medical examinations and repeat checks are also conducted at schools subject to request.

Breast-feeding

183. In April 1998, the Ministry of VOMIL held a workshop to promote breast-feeding, organized in cooperation with a Curaçao-based organization entitled Lechi di Mama (Mother's Milk) and based on the 10 rules for successful breast-feeding drawn up by the World Health Organization and UNICEF. Hospitals applying these 10 rules are designated as "baby-friendly hospitals". The purpose of the workshop was to encourage hospitals to qualify as baby-friendly hospitals.

184. During the workshop, health care workers were given the necessary information to bring about a change of policy within the relevant institutions. At the end of the workshop, the GGD and several hospitals in the Netherlands Antilles signed a declaration of intent, stating their willingness to begin promoting breast-feeding. This is the first step towards qualifying as a baby-friendly hospital.

Children with HIV/AIDS in the Netherlands Antilles

185. Most HIV-positive children are one year old or less. The main cause of infection is the transfer of the virus from mother to child. Pregnant women on the Netherlands Antilles are regularly screened for HIV. Fixed protocols are applied to this process. HIV-positive pregnant women are treated with a reverse transcriptase inhibitor, AZT, throughout their pregnancy. During delivery, the drug is administered intravenously to reduce the chances of infection.

186. To the extent that this has been studied, the chances of an infected mother passing on the virus to her child are between 26 and 56 per cent. Six per cent of pregnant women known to be HIV positive (815) are aged 15 and under.

187. The Netherlands Antilles AIDS Foundation has been operating in Curaçao since September 1993. It is subsidized by the island territory of Curaçao and is responsible for disseminating information about AIDS, preventing AIDS and counselling AIDS sufferers and their families.

Teenage pregnancies

188. Teenage pregnancies are a steadily increasing problem which the government of the Netherlands Antilles is tackling through the provision of sex education to young people.

189. In 1996, the Ministry of VOMIL organized a national workshop on reproductive health in cooperation with the Pan American Health Organization (PAHO), at which all five islands of the Netherlands Antilles, young people and multisectoral organizations were represented. The workshop yielded the following general strategies.

190. Each island territory should appoint a commission to work on a project aimed at reducing teenage pregnancies. It is therefore necessary to put together programmes on "reproductive health".

191. During the brainstorming session, ideas were also suggested by young people themselves. The following solutions were proposed:

- 10 to 12-year-olds should be given sex education;
- parents and adults should be involved in this instruction;
- parents' committees and the school governors should also be involved;
- the members of the executive council with responsibility for education, cultural affairs and health should be involved;
- posters/leaflets/slogans written by adolescents themselves should be distributed to young people;
- community centres should be involved;
- the existing infrastructure should be exploited;
- use should be made of mass communications;
- vending machines selling condoms should be installed;
- the "health promoting schools" concept should be implemented.

192. Research in Curaçao in 1997 showed that 7 per cent of all children were born to teenage mothers. These young mothers frequently drop out of school and have no childcare provisions to fall back on. This tends to isolate them and make them more dependent on their partners. Consequently, they are regarded as one of the biggest "at risk" groups on the island.

193. The problem is even greater in Sint Maarten,where 11 per cent of all children are born to teenage mothers, most of whom are between the ages of 12 and 16. Many children – an estimated 13 per cent - are born to unregistered mothers.

D. Social security (art. 26)

194. The Kingdom of the Netherlands has entered a reservation to this article, namely that minors do not have an autonomous right to social security based on social insurance contributions.

195. The government of the Netherlands Antilles believes that minors derive their right to social security from their parents and/or guardians. However, young people who are working have an independent right to social security by virtue of their employment.

196. In 1995, the National Ordinance on General Widows and Orphans Insurance was amended (Official Bulletin 1995, 228) to remove the distinction between legitimate and illegitimate children. All children are now entitled to orphan's benefit, provided they satisfy the relevant legal requirements (i.e. the loss of one or both parents). Illegitimate children are subject to an extra condition, namely that there must be evidence of family life and family ties with the deceased insured father. This is designed to ensure that orphan's benefits are only paid out to those who are entitled to them.

197. In 1996, a similar amendment was made to the National Ordinance on Accident and Health Insurance (Official Bulletin 1996, 7 and 8), namely that instead of having the right to orphan's benefit, children are entitled to medical treatment and care or to a regular financial allowance.

E. Childcare services (art. 18, para. 3)

General

198. As mentioned earlier, a non-governmental organization, SIFMA, is concerned mainly with the care of children living in "adverse" conditions, i.e. children at risk. In particular, SIFMA focuses on children up to the age of four who need childcare, children 4-12 who require out-of-school care, teenage mothers and parenting support for parents with children up to age 18.

199. Over the years, SIFMA has set up agencies on all the islands of the Netherlands Antilles which provide training and refresher courses for crèche workers in close cooperation with SIFMA. SIFMA has been providing these training and refresher courses for the past 12 years. Youth health care services and baby and toddler clinics also actively supply information and advice to parents on several of the islands.

200. SIFMA receives a grant to ensure that it can continue to offer training, support and workshops for crèche workers in this way.

201. Another positive development is that the Island Ordinance on minimum requirements for pre-school care has been adopted by the island government of Curaçao. This will make it easier to work on improving the quality of care facilities.

202. In 1996 SIFMA conducted a study on the quality of childcare in the Netherlands Antilles. The results of this study were presented at a Caribbean workshop which IFMA organized on Sint Eustatius and where a large volume of information was exchanged on this topic by various Caribbean States.

The supply of childcare places

203. There are nine government-subsidized crèches on Curaçao that employ trained staff and also offer places to the children of parents on low incomes. These crèches can accommodate approximately 1,000 children. There are also more than 100 private playschools offering places to around 5,000 children.

204. There are two government-subsidized crèches employing trained staff on Bonaire. They offer places to around 100 children. In addition, there are another eight privately run playschools with places for approximately 270 children. Bonaire has also opened the Sentro Boneriano di Informashon Edukativo pa Kuido Infantil (Sebiki) (Bonaire Child Care Information Centre) when refresher courses and counselling are provided.

205. On Sint Eustatius, there is a government-subsidized crèche offering places to 75 children, plus a privately run playschool with around 15 pupils. The staff are trained, and training and refresher courses are being improved with funding and practical support from SIFMA.

206. For the past two years, Saba has had a government-subsidized crèche offering places to 50 children. Staff receive regular refresher training.

207. On Sint Maarten, childcare is privately run: there are around 40 centres with places for 1,500 children. Some of the crèche workers have been trained by SIFMA. Regular refresher courses are also given.

Childcare for disabled children

208. See under "Special education".

F. Standard of living (art. 27, paras. 1-3)

209. Antillean law states that the parents are primarily responsible for the maintenance of their children. This obligation is established in law (arts. 478-480 BWNA). If a parent or step-parent who is not exercising responsibility for a minor fails to fulfil the maintenance obligation, the person with responsibility for the child can file a claim with the court of first instance against the parent who is in default. The court of first instance can also be asked to fix the level of the maintenance payments.

210. See also under sections A (Parental guidance), B (Parental responsibility) and E (Recovery of maintenance for the child).

VII. EDUCATION, LEISURE AND CULTURAL ACTIVITIES

A. Education, including vocational training and guidance (art. 28)

Compulsory education

211. In the Netherlands Antilles, primary education is free for all children. The island territories must provide financial support for higher education to parents who cannot afford the fees.

212. Laws on compulsory school attendance are enshrined in the National Ordinance on School Attendance of 19 July 1991 (Official Bulletin 1991, 85). Compulsory school attendance is enforced for primary education, special education (Official Bulletin 1979, 28) and secondary education (Official Bulletin 1979, 29).

213. The National Ordinance on School Attendance took effect for the island territory of Curaçao on 1 January 1992 (Official Bulletin 1991, 124). The same law was introduced on the island territory of Saba on 1 August 1993 (Official Bulletin 1993, 67) and for the other island territories of Bonaire, Sint Eustatius and Sint Maarten on 1 August 1996.

214. Curaçao, Bonaire and Saba have laid down implementing rules by island ordinances. Sint Eustatius and Sint Maarten laid down such rules with effect from 1 August 1998.

215. The National Ordinance on School Attendance applies to minors between 6 and 15 years old.

216. On each island territory, one or more agencies are responsible for enforcing compliance with the National Ordinance on School Attendance. On Curaçao, this is done by the Juvenile and Vice Police Squad, in cooperation with, among others, the school attendance officer. One of the ways in which attempts are made to exercise control is by investigating cases where parents are not sending their children to school. Minors who play truant are found and returned to school, as are minors who have left home or run away to another island. There is also a School Attendance Committee made up of representatives from various agencies, both national and island-based, which are variously confronted with infringements of the National Ordinance on School Attendance.

217. The aim of government policy is to ensure that all school-age children complete their education. Yet some 4 per cent finish primary school without meeting the criteria for entry to mainstream secondary education. Between 300 and 600 children drop out of primary school at an earlier stage. Others should attend special schools, but because of the long waiting lists they often drop out of school altogether.

218. The children of illegal immigrants form a special group. Whether or not they attend school depends on the policy of the island territory concerned, and on the number of places available. On Sint Maarten, the number of children with parents from Haiti and the Dominican Republic will rise in the next few years. These children speak neither Dutch nor English at home.

219. Studies have shown that children belonging to one of the following categories are frequently among those who fail to attend school:

- children of Dutch nationality who speak a different language;
- children born on Sint Maarten whose parents are legal immigrants;
- children who are registered but whose parents are illegal immigrants;
- children who are not registered and whose parents are illegal immigrants.

220. Most children who cannot be placed in mainstream schools attend "makeshift" schools. These are private schools set up by foreign teachers on their own initiative. Most of them do not

teach the formal curriculum or use the prescribed teaching materials, and the accommodation provided is often poor. Moreover, they charge a fee of NLG 60-150 per month, which the target group cannot always afford. In order to tackle this problem, the government of Sint Maarten is working with the United Nations Development Programme on a project to start a holding school for these children.

Secondary and vocational education

221. Following completion of primary or special education, pupils move on to secondary education.

222. The Netherlands Antilles offers the following forms of secondary education:

(a) Pre-university education (VWO);

(b) Senior general secondary education (HAVO);

(c) Junior general secondary education (MAVO);

(d) Pre-vocational education (BVO).

223. The National Ordinance on Secondary Education of 12 January 1979 (Official Bulletin 1979, 29) contains regulations governing secondary education.

224. Public (i.e. government-funded) schools are open to all pupils without discrimination. Education is given with respect for all religious and other convictions.

225. VWO lasts a total of six years. It prepares pupils for university or higher professional education (HBO). HAVO lasts five years. It is a preparation for VWO and HBO. MAVO lasts four years. It is a preparation for HAVO. BVO lasts four years.

226. The Government is aware that at present, the education system does not fully meet the needs of society. It also fails to tie in closely enough with the social situations and perceptions of pupils. Teachers are hard to recruit. More differentiation is required in vocational education so that it matches labour market demands more fully. At national level, innovations are being introduced in all forms of education.

227. Basic secondary education was introduced during the 1998-1999 school year. This system is designed to "provide a common and general intellectual, cultural and social education which will help pupils to function as useful members of society and to take responsible decisions about their further education and subsequent career".

228. This extends the basic education provided at primary school by a further two school years. Only after this is there any differentiation in the curriculum. Special measures are due to be taken to provide for children who require special attention.

Special education

229. Curaçao has three schools for children with severe learning difficulties (ZMLK), eight for children with moderate learning difficulties (MLK), and one school for children in both categories. The provision for special secondary education consists of two schools for pupils from MLK schools (one for girls and one for boys). There is also a school for hearing-impaired children. There is no school for visually impaired children. These children are therefore often sent to schools abroad where their needs can be met.

230. There are various problems relating to special education. The following problems affecting education for the disabled have been identified on Curaçao in particular:

(a) The lack of special care for pre-school children and provision for special secondary education;

(b) The shortage of teachers in special education;

(c) A shortage of teaching materials in Papiamento in the ZMLK and MLK schools.

231. Bonaire has one school providing special education. It has one ZMLK and a small number of MLK classes.

232. Sint Maarten has one public (government-funded) school providing special education. It offers places not only to children with a mental or physical disability but also to children with behavioural problems and learning and/or emotional difficulties. There are no special provisions for children with a sensory disability.

233. Sint Eustatius has introduced "special classes" at primary schools for children with learning difficulties and for children aged 6 to 13 with emotional or behavioural problems.

234. There are currently no provisions for special education on Saba.

235. In terms of the care and schooling of disabled children, the island territories tend to have to rely on what is available in Curaçao.

The costs of education

236. Each year, the island governments spend up to 60 per cent of their budgets on education, social and cultural development, sport and recreation, health care, employment and youth services.

237. Education is free in nursery schools and in primary, technical and special education. This applies to both publicly run and private schools. At the other types of schools, parents are required to pay for school equipment and teaching materials, as well as provide a parental contribution. Children from low-income families can approach the school management for a

grant from private donations or the school hardship fund. Children from low-income families can also apply for an annual allowance to cover the costs of school uniforms. This applies to children of five and older.

238. Under articles 53 et seq. of the National Ordinance on Primary Education (Official Bulletin 1979, 28), the costs of private schools are reimbursed by the governments of the island territories. These costs include running costs (purchasing teaching materials and teaching aids and other teaching requirements).

239. Basic grants are also awarded to children from low-income households, and student finance can be arranged for those wishing to go on to higher education.

Higher education

240. The National Ordinance on the University of the Netherlands Antilles of 12 January 1979 (Official Bulletin 1985, 43) sets out the entry requirements for university (art. 33). If a pupil/student has reached the age of 23 and does not meet the criteria for entry, the minister can nevertheless allow him to sit his examinations following a declaration from the faculty board that he has been examined and has shown evidence of sufficient development and suitability to pursue a higher education course.

241. Higher education is organized by the Universities Council. Tuition and examination fees must be paid annually (art. 44).

242. It is also possible to obtain student finance consisting of a basic grant or student loan (National Ordinance of 8 May 1961 (Official Bulletin 1961, 78) governing the regulation of national study allowances (Study Allowance Regulations)). Students in the Netherlands Antilles can be awarded study allowances:

(a) If they are minors, provided their parents are resident in the Netherlands Antilles as defined in the BWNA at the time when the allowance is awarded;

(b) If they are adults, provided they are not over the age of 25 at the time when they receive the study allowance.

The Minister can make exceptions to these conditions (art. 3).

243. The Minister of Education can also withdraw the study allowance if:

(a) The student does not achieve satisfactory grades;

(b) The student fails to work hard enough or his behaviour is poor;

(c) The student interrupts his studies without good reason.

Providing information on education

244. Projects to promote education include:

(a) The preparation of workshops for students going to study abroad;

(b) Support for special education;

(c) Opening new schools and providing training for new teachers;

(d) Improving the education system, e.g. through basic secondary education and the introduction of a core curriculum;

(e) Organizing sport and competitions in schools;

(f) Computerizing schools and supplying computers to secondary schools with the space to accommodate them;

(g) Regular information and educational video programmes, regular publications and the distribution of magazines for primary schools. Folders and newspaper articles containing information about education in general will be made available to the wider public.

B. Aims of education (art. 29)

245. Primary, secondary and special education are governed by a number of basic criteria laid down by law. Education can be used to transfer knowledge, culture, norms and values. Education is the instrument by which the necessary attitudes, skills and changes of mentality are formed.

246. Article 7 of the aforementioned National Ordinance on Primary Education specifies what this type of education should consist of. Children are taught reading, writing, arithmetic, Dutch, history, geography, science, music; drawing, physical education, handicrafts, road safety, social studies, Papiamento in Bonaire and Curaçao, English on the Windward Islands, Spanish and religious studies.

247. The Minister of Education specifies how many hours of teaching are provided on each island territory, based on the recommendation of the educational authorities.

248. No formal provision is made for education to be given in the mother tongue of the children (other than Papiamento, e.g. in Spanish or English). In practice, however, children are taught as far as possible in their mother tongue for a brief period before being gradually acclimatized to lessons in Dutch, which is the standard language of tuition on the islands.

249. In 1986, the "Kolegio Erasmus" primary school was opened on Curaçao as a non-profit-making body. This is a humanist school where pupils can, if they wish, be taught in Papiamento.

C. Leisure, recreation and cultural activities (art. 31)

250. Many civil society organizations are active in this area. Curaçao and Sint Maarten both have services and agencies for youth affairs, education and sport, which organize social and cultural sporting activities. On Bonaire, the Servisio di Enseñansa i Formashon (Education and Training Service) is responsible for sport and the Social Services Department covers youth affairs and community centre work.

251. Social and cultural development, sport and leisure activities organized by civil society organizations are almost all made possible by volunteers. Most of the personnel working in these areas, such as community workers, child/teenage counsellors and sports teachers, are employed by the government.

252. There is a trend towards closer cooperation between the government and voluntary organizations whereby government officials support and advise these organizations where necessary. On Curaçao, the Training Centre for Youth Welfare Work organizes training and refresher courses for both government employees and volunteers. On the other islands, regular training for volunteers is provided by various organizations.

253. Out-of-school care on Curaçao is provided jointly by the government, youth services, crèches and SIFMA. More recently, the government has taken over 13 centres for out-of-school care. There are also an unknown number of private childcare centres, plus crèches which offer these same services. For the past 10 years, SIFMA has been running a short course once a year for those who work with these children. The government's increased involvement will improve quality control and hence boost attention for training. This type of care also gives the children themselves opportunities to engage in leisure activities.

254. On Sint Maarten, there is one organization active in this area, ASA (After School Activities). ASA fulfils a key requirement, given that most mothers tend to have to care for their families alone and therefore often have two jobs in order to make ends meet. Approximately 150 children are cared for in various neighbourhoods.

255. SIFMA has devised a training course for youth leaders with a view to encouraging a more professional approach, with guarantees to ensure that children have the opportunity for recreation they require.

256. A study carried out in 1999 on Curaçao, Bonaire and Sint Maarten on the participation of the population in sport yielded the following results:

(a) On Curaçao, 32.4 per cent of the population aged six and over takes part in one or more physical or mental sports, compared with 44.1 per cent on Bonaire and 28.5 per cent on Sint Maarten;

(b) Sport in the Netherlands Antilles consists primarily of physical activities;

(c) The most popular physical sport on Curaçao is walking, on Bonaire swimming and on Sint Maarten basketball;

(d) On Sint Maarten, 47 per cent of all 6-14 year-olds and 40.8 per cent of all 15-24 year-olds take part in sport; on Bonaire 58.6 per cent of 6-14 year-olds and 62.5 per cent of 15-24 year-olds; and on Curaçao 39.7 per cent of 6-14 year-olds and 44.6 per cent of 15-24 year-olds;

(e) On Curaçao, 52.6 per cent of all 6-14 year-olds and 58.1 per cent of all 15-24 year-olds attend sporting events; on Bonaire 80.3 per cent of 6-14 year-olds and 84.8 per cent of 15-24 year-olds; on Sint Maarten 34.1 per cent of 6-14 year-olds and 40.4 per cent of 15-24 year-olds.

VIII. SPECIAL PROTECTION MEASURES

A. Children in emergency situations

Refugee children and children in armed conflict (arts. 22, 38, 39)

257. With regard to article 22, the Kingdom of the Netherlands made a declaration in respect of the Netherlands Antilles stating that the Convention relating to the status of refugees of 28 July 1951 does not apply to the Netherlands Antilles. Article 22 of the Convention on the Rights of the Child will be interpreted as referring only to such other international human rights or humanitarian instruments as are binding on the Kingdom of the Netherlands in respect of the Netherlands Antilles.

258. The term "refugee" as such is not used in Netherlands Antilles law. The National Ordinance on Entry and Deportation (LTU), which regulates the entry and deportation of aliens to and from the Netherlands Antilles, is used as the basic point of departure in requests for asylum. The Netherlands Antilles is also a signatory to the International Convention on the Elimination of All Forms of Racial Discrimination, article 3 of which includes a ban on refoulement.

259. With regard to article 38, the Kingdom of the Netherlands declares that it is of the opinion that States should not be allowed to involve children directly or indirectly in hostilities and that the minimum age for the recruitment or incorporation of children into the armed forces should be above 15 years. During periods of armed conflict, provisions shall prevail that are most conducive to guaranteeing the protection of children under international law, as referred to in article 41 of the Convention.

260. In the Netherlands Antilles, compulsory military service is governed by the 1961 Ordinance on Compulsory Military Service (Official Bulletin 1961, 223). Military service applies only to males of Dutch nationality between the ages of 18 and 45.

B. Children in conflict with the law

1. Due process rights and juvenile justice (art. 40)

261. The Kingdom of the Netherlands accepts the provisions contained in article 40 of the Convention, with the reservation that minor offences need not be heard in the presence of a legal representative.

262. Certain provisions contained in this article also occur in other conventions, such as the ICCPR. With regard to the implementation of detention orders for juveniles, article 41b of the WvSrNA states that juveniles will be detained in a corrective institution or placed in the care of an association, non-profit-making body or institution with specific responsibility for providing long-term care for minors. To this extent, Netherlands Antilles law satisfies the Convention requirements.

263. The WvSvNA states that no one may be prosecuted or convicted other than in the manner and in the circumstances defined by national ordinance. Accused persons are notified of the offence of which they are accused; this applies both to adults and to minors. In the Netherlands Antilles, an accused person is regarded as innocent until he is proved guilty.

264. All judicial decisions taken in accordance with the WvSvNA are taken in the shortest possible time. With regard to the requirement for legal assistance in the preparation and presentation of a defence before a court of law, article 481 of the WvSvNA states that a juvenile who has been remanded in custody, is held in pre-trial detention or is appearing in court must be afforded legal counsel upon request. Under article 489 of the WvSvNA, the parents must be present during the trial.

265. Under the WvSvNA, nobody is obliged to testify against him/herself. A defendant is, however, free to provide confessions. He/she is not obliged to answer the questions put to him/her.

266. A defendant can lodge an appeal with the Court of Justice after the execution of an order for remand or detention in custody. The same applies to a decision extending a custodial order.

267. A minor is entitled to an interpreter if he or she does not understand the language in which the case is being conducted.

268. Juveniles who have not yet reached the age of 12 cannot be prosecuted. However, other specific coercive measures can be used, such as detention and holding for questioning. Under the WvSvNA, juvenile defendants are treated in the same way as adults. This primarily includes the right to a properly defended and fair trial (the right to be heard, access to the courts and the right to be assigned counsel having regard to the reservation above, etc.).

269. Article 479 of the WvSvNA states that the Code of Criminal Procedure for juveniles applies to individuals who have not yet reached the age of 18 when prosecution proceedings begin.

270. The provisions relating to the parents or guardian apply if the defendant is a minor (art. 480 WvSvNA).

271. The Guardianship Council has a duty to provide information, either at the request of the public prosecutor, the examining magistrate or the trial judge, or on its own initiative (art. 486, 487 and 491 WvSvNA).

272. Article 488 of the WvSvNA states that the public nature of a trial will as a rule be upheld, although exceptions will be made for defendants who have not yet reached the age of 16. The purpose of this exception is to avoid unwanted publicity which could compromise the interests of the juvenile.

273. The parents are not required to be present at a hearing by an examining magistrate. However, they are obliged to attend a trial. The defendant is entitled to ask for his or her parents or guardian to be excluded from the hearing. The parents must in that case be notified of the substance of the hearing, unless there are compelling reasons for not doing so (art. 489 WvSvNA).

274. If the defendant has not yet reached the age of 16 when prosecution proceedings begin, legal competences are shared with his counsel (art. 494 WvSvNA).

Rehabilitation

275. A number of projects launched under the government's rehabilitation policy are currently being prepared or implemented.

276. Rehabilitation of juvenile detainees through military service. This project is designed to help rehabilitate male detainees between the ages of 18 and 24 by offering them the opportunity to do military service or to take part in a programme to assist their reintegration into the labour process once they re-enter society.

277. Negrita project. The Negrita project aims to rehabilitate offenders by enabling them to work on building the replica of a vessel called the Negrita, thereby improving their chances on the job market once they have been released. Juveniles can also take part in this project.

278. Maria Höppner Foundation. Minors who show a tendency towards antisocial or criminal behaviour are placed in a special juvenile treatment centre on Bonaire, where they are taught a variety of skills.

279. Rehabilitation through horticulture. This is an apprenticeship scheme for juvenile drop-outs on Bonaire. It is also used to enable juvenile first offenders to serve an alternative, community-based sentence. The project involves horticultural work (i.e. special plant cultivation techniques).

280. Youth brigade. The purpose of this project is to promote the social integration of young adults between the ages of 16 and 24 with inadequate social skills. There are three target groups: young people with behavioural problems and an interrupted education (but no history of

delinquency), delinquents who have not served sentences and delinquents who have served sentences. These young people are given the opportunity to obtain a vocational qualification, thereby improving their chances of securing employment and reducing their chances of re-offending by the offer of rehabilitation programmes. The youth brigade will soon be operational, and will be administered by the island territory of Curaçao. Work to adapt the project dossier to the Windward Islands is now complete and it is currently also being adapted for implementation on Bonaire.

2. Children deprived of their liberty, including any form of detention, imprisonment or placement in custodial settings (art. 37 (b), (c) and (d))

281. The Kingdom of the Netherlands (in respect of the Netherlands Antilles) accepts article 37 (c) of the Convention with the reservation that the criminal law provisions that apply in principle to adults should also apply to minors who have reached the age of 16. Minors serving custodial sentences will, under certain circumstances, be required to be imprisoned with adults.

282. With regard to the provisions of article 37 (c), however, it should be pointed out that during pre-trial detention, there is no specific statutory guarantee that juveniles will be held separately from adults. With regard to convicted offenders, however, article 11 of the Ordinance of 6 October 1930 on custodial institutions states that children must be held separately from adults.

283. Article 484, paragraph 3, of the WvSvNA states that juveniles on remand or in pre-trial detention can be held at any location that is deemed suitable. Consequently, no statutory guarantee is provided, and it is therefore a matter of looking at the practical implementation of these provisions to determine how far the Convention has been upheld.

284. Existing rules in the Netherlands Antilles satisfy the provisions cited under (b) to (d) of this provision.

3. Prohibition against torture or inhumane treatment (art. 37 (a))

285. See Part IV.H with regard to the provisions of article 37 (a) (the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment).

4. Physical and psychological recovery and social reintegration (art. 39)

286. Policy relating to juveniles serving custodial sentences is based on the fundamental principle of the right to education, employment, mental and physical exercise and spiritual development. The juveniles in question are aged between 16 and 23. They are offered opportunities for recreation, and efforts are also made to re-educate them in order to prepare them for reintegration into society.

C. Children in situations of exploitation

1. Economic exploitation, including child labour (art. 32)

287. Child labour in the Netherlands Antilles is prohibited by law. Article 15 of the 1952 Labour Regulation (Arbeidsregeling) prohibits work done by children (i.e. children under the age of 14) in exchange for wages or payment or otherwise. There are some exceptions in which these children may work, for example:

(a) In or for the benefit of the family in which the child is being raised;

(b) In schools, work camps or approved schools, provided these activities are of an educational nature and are not in the first instance intended to generate a profit.

288. Moreover, article 16 of the 1952 Labour Regulation states that children who have reached the age of 12 and who have completed primary school may work, provided these activities are necessary for the acquisition of a trade or profession or if the nature of the activity requires it to be carried out by children. Also, these activities may not be physically or mentally demanding or dangerous.

289. In the Netherlands Antilles, juveniles between the ages of 14 and 18 are covered by certain prohibitions. They are not allowed to engage in night work (between 7 p.m. and 7 a.m.) or in work of a dangerous nature (art. 17, 1952 Labour Regulation). The definition of "danger" in the Netherlands Antilles includes both the risk of death or injury and other dangers to health.

290. The Labour Decree on Juveniles (Arbeidsbesluit jeugdige personen) states that juveniles are prohibited from doing work which is harmful to their health and/or endangers them. For example:

- they are not allowed to do work which involves the use of a pneumatic drop stamp or compacting beam;
- they are not allowed to carry or lift heavy loads frequently;
- they are not allowed to operate concrete mixers with mechanical hoisting gear, circular saws, or bending and shearing machines;
- they are not allowed to operate cranes, platform hoists, fork-lift trucks or tractors;
- they are not allowed to nurse or care for patients who are infected with a serious disease.

291. A comprehensive enumeration of all forms of dangerous work which may not be performed by juveniles is incorporated in the Labour Decree for Juveniles.

292. Articles 2-26 of this Decree do not apply if the work is performed by a young person aged 16 years or over under the guidance of an expert in respect of an accepted form of vocational training.

293. In certain cases, it is possible to obtain an exemption from the provisions cited in the Labour Decree for Juveniles. A written application must in that case be presented to the Director of the Department of Labour and Social Affairs. So far, no such application has been made by an employer.

294. The Labour Inspectorate at the Department of Labour and Social Affairs supervises the provisions of the 1952 Labour Regulation and the Labour Decree for Juveniles.

295. A violation of the prohibitions contained in the 1952 Labour Regulation and the Labour Decree for Juveniles is regarded as an infringement of the law and carries a maximum of three months' imprisonment or a fine not exceeding 600 Antilles guilders.

296. The following Conventions of the International Labour Organization are applicable in the Netherlands Antilles:

- No. 10 concerning the Age for Admission of Children to Non-Industrial Employment;
- No. 29 concerning Forced or Compulsory Labour;
- No. 33 concerning the Age for Admission of Children to Non-Industrial Employment at Sea;
- No. 90 concerning the Night Work of Young Persons Employed in Industry.

2. Drug abuse (art. 33)

297. The illegal use of narcotic substances is a universal problem which does not affect children alone. In the Netherlands Antilles, legislation applying to drug use is contained in the 1960 National Ordinance on Opium.

298. Drugs policy relating to young people is still in its infancy, which is to say that data are still being gathered in order to obtain a clear idea of the situation. The situation on the other islands is also insufficiently understood.

299. At present, the general approach to the drugs problem on Curaçao involves the following activities:

(a) Harm-reduction for chronic addicts who are homeless;

(b) Four rehabilitation centres with 80 places for men and 20 for women (there are waiting lists);

(c) Devising a plan to prevent long-term drug use among schoolchildren who experiment with marihuana.

300. Through the Kingdom of the Netherlands, the Netherlands Antilles is a party to the Single Convention on Narcotic Drugs concluded in New York on 30 March 1961, to the Protocol amending the Single Convention on Narcotic Drugs concluded at Geneva on 25 March 1972, to the Convention on Psychotropic Substances concluded in Vienna on 21 February 1971 and to the Convention against the Illicit Trafficking in Narcotic Drugs and Psychotropic Substances concluded in Vienna on 20 December 1988.

3. Protection against sexual exploitation and sexual abuse (art. 34)

301. Antillean criminal law has no provisions relating to child prostitution. However, certain acts and/or activities relating to sexual abuse or sexual intercourse with minors are deemed criminal offences. These articles are sometimes used to fill the gap which exists in the law in relation to child prostitution.

302. In brief, Antillean legislation governing sexual offences is as follows:

(a) Compelling a person by the use of violence or other act or by the threat of violence or other act to submit to acts consisting or partly consisting in the sexual penetration of that person's body carries a term of imprisonment not exceeding 12 years (art. 248 WvSrNA);

(b) The commission with an unconscious, powerless or disturbed person of acts consisting or partly consisting in the sexual penetration of that person's body carries a term of imprisonment not exceeding eight years (art. 249 WvSrNA);

(c) The commission with a person under the age of 12 years of acts consisting or partly consisting in the sexual penetration of that person's body carries a term of imprisonment not exceeding 12 years (art. 250 WvSrNA);

(d) The commission with a person aged between 12 and 15 years of indecent acts consisting or partly consisting in the sexual penetration of that person's body carries a term of imprisonment not exceeding eight years (art. 251 WvSrNA);

(e) The commission of indecent acts with an unconscious, powerless or disturbed person or the commission of indecent acts - outside marriage - with a person aged between 12 and 16 years or the inducing of such a person to commit or permit such acts with a third party - outside marriage - carries a term of imprisonment not exceeding six years (art. 253 WvSrNA);

(f) Compelling a person by the use of violence or other means or by the threat of violence or other means to commit or permit indecent acts carries a term of imprisonment not exceeding eight years (art. 252 WvSrNA);

(g) Intentionally inducing a minor of unimpeachable conduct, by gifts or promises of money or goods, by the abuse of a position of authority arising from actual relations or by

deception, to commit indecent acts with - or to permit the commission of such acts by - the offender carries a term of imprisonment not exceeding four years. This offence may be prosecuted only if a complaint has been filed (art. 256 WvSrNA);

(h) Having sexual intercourse with a minor who is under the responsibility of the offender or has been entrusted to the offender for the purpose of care, education or supervision carries a term of imprisonment not exceeding six years (art. 257 WvSrNA);

(i) Intentionally procuring or inducing the commission of sexual intercourse by a minor entrusted to the care of the offender, or by a minor whom the offender knew or should have known to be a minor, with a third party carries a term of imprisonment not exceeding four years (art. 258 WvSrNA);

(j) Making a profession or habit of intentionally procuring or inducing the commission of sexual intercourse by other persons with a third party carries a term of imprisonment not exceeding one year (art. 259 WvSrNA).

4. Other forms of exploitation (art. 36)

303. See the Convention articles relating to exploitation.

5. Sale, trafficking and abduction (art. 35)

304. Trafficking in adults and minors is a criminal offence under articles 291, 292 and 260 of the WvSrNA. The abduction of, and trafficking in, children in general within the Netherlands Antilles is deemed to be a criminal offence under articles 287 et seq. of the WvSrNA.

D. Children belonging to a minority or an indigenous group (art. 30)

305. There are a large number of both registered and unregistered immigrants in the Netherlands Antilles.

306. In June 1995, the Immigrant Children Project, which was mainly targeted at immigrants from Haiti and the Dominican Republic, was launched on Sint Maarten. This project was preceded by a study on the domestic situations of these groups, which was carried out by CEDE Sint Maarten, a government-funded child training project, in cooperation with SIFMA. The project focuses both on the care of children and on the counselling of parents.

307. Following hurricane Luis in September 1995, the project had to be quickly adapted to the new situation, since the target group was no longer living in the Shantytowns but had been transferred to tented camps and then to a "container village". The advantage of this was that immigrants of different nationalities could now be reached by pre-school and after-school care programmes and programmes providing parenting support and information on various topics. The "container village" was closed at the end of November 1997.